

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
 . Detroit, Michigan
 . August 21, 2013
Debtor. . 10:05 a.m.
.

EXCERPT OF HEARING RE. EMERGENCY MOTION FOR
CLARIFICATION OF THE JULY 25, 2013, STAY ORDER

EXPEDITED HEARING RE. NOTICE OF PENDENCY OF DEFENDANT
SYNCORA GUARANTEE, INC.'S, EMERGENCY MOTION TO DISSOLVE
THE TEMPORARY RESTRAINING ORDER AND CONDUCT
EXPEDITED DISCOVERY

STATUS HEARING RE. CORRECTED MOTION TO ASSUME LEASE OR
EXECUTORY CONTRACT

ADVERSARY PROCEEDING 13-04942 - STATUS CONFERENCE RE.
ORDER GRANTING IN PART AND DENYING IN PART DEBTOR'S
EX PARTE MOTION FOR AN ORDER SHORTENING NOTICE, STAYING
FURTHER BRIEFING AND SCHEDULING AN EXPEDITED HEARING WITH
RESPECT TO MOTION OF DEBTOR CITY OF DETROIT TO SCHEDULE
STATUS CONFERENCE, SET BRIEFING SCHEDULES AND
MAINTAIN STATUS QUO

(EMERGENCY MOTION FOR CLARIFICATION OF THE JULY 25, 2013,
STAY ORDER)

BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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by the Court, and that you will support and defend the
Constitution and laws of the United States?

ATTORNEYS: I will (collectively).

THE COURT: All right. Welcome. We'll take care of
your paperwork for you. You are all set.

ATTORNEY: Thank you, your Honor.

THE COURT: You're welcome. One second, please. My
password is not working here, Chris. All right. Well, let's
start. I want to start with the Davis matter, please.

MR. PATERSON: Thank you, your Honor. Andrew
Paterson on behalf of Robert Davis.

THE COURT: And you may proceed, sir.

MR. PATERSON: Sir, this is our motion for
clarification of your stay order that was entered in July and
addressed, as we saw it, three state lawsuits that were
included in the stay, although the debtor was not a party to
those suits, but they did involve the first or second biggest
liability of the debtor, the pension plans. And the
definition or the identification of those cases was set forth
in the motion, and your order did adopt that.

THE COURT: Excuse me one second, sir. Chris, it's
working. Go ahead, sir.

MR. PATERSON: Since that time, your order has been
interposed in our state case up in Ingham County on an open

1 meetings case. It's also been interposed in other matters
2 that I've been involved in, and I'd like to have some
3 clarification as to the extent of that order. I feel that
4 the state proceeding in Ingham County is an open meetings
5 case that has no impact whatsoever directly or practically on
6 the debtor's Chapter 9 protections.

7 THE COURT: Well, let's talk about that. What does
8 your client seek to accomplish by that lawsuit?

9 MR. PATERSON: A declaration from the Court that the
10 Loan Board violated the Open Meetings Act in connection with
11 the appointment of Mr. Orr under Public Act 72 as the
12 emergency financial manager for the City of Detroit.

13 THE COURT: And what does he intend to do with that
14 declaration if he obtains it?

15 MR. PATERSON: The declaration is used in the state
16 court to guide conduct of public bodies, and I will also seek
17 an injunction that they not violate the OMA again, although
18 it's somewhat moot at this point since Public Act 72 has now
19 been repealed by the enactment of Public Act 436 of 2012
20 under which Mr. Orr currently serves and is appointed.

21 THE COURT: Is it your representation to the Court
22 that it is not the intent of your client to use such a
23 declaration to remove Mr. Orr from office?

24 MR. PATERSON: It is, and he did in our reply brief
25 so stipulate that we would not be appealing any such

1 decision. I also indicated to the Court and have brought
2 with me a copy of the transcript from our July 24 hearing
3 before Judge Collette wherein he indicated that he was not
4 going to invalidate any actions taken by the Loan Board in
5 connection with the appointment.

6 THE COURT: Well, I appreciate that, but I want to
7 be sure you understand the very specific question I'm asking
8 you. I get that it is not the intent of your client or of
9 the state court to invalidate any of the actions of the Loan
10 Board or any of the actions that Mr. Orr has taken from the
11 time of his appointment until whenever that judgment might be
12 entered. I've got that.

13 MR. PATERSON: Nor could I seek that relief, nor
14 could the Court grant that under Michigan law.

15 THE COURT: But that's not the question I'm asking.
16 I'm asking is -- the question I'm asking is is it your
17 representation to the Court that your client will not seek to
18 use that judgment to remove Mr. Orr from office in the
19 future?

20 MR. PATERSON: That is, in fact, our stipulation.

21 THE COURT: So if I heard you correctly, what you
22 plan to do with this judgment is to use it to enjoin the Loan
23 Board or others from violating the Open Meetings Act in the
24 future?

25 MR. PATERSON: That is correct.

1 THE COURT: And anything else?

2 MR. PATERSON: No. I mean the relief that I seek is
3 the declaration. I am compelled to ask for an injunction
4 against further violations. It's within the discretion of
5 the state court to issue or not issue that, and then I will,
6 of course, be seeking reimbursement of the attorneys' fees
7 and costs.

8 THE COURT: All right. So the question remaining to
9 be addressed is why shouldn't the order that the Court
10 previously entered be read to stay your suit or the suit
11 where you represent Mr. Davis?

12 MR. PATERSON: Because none of the debtor's assets
13 or property is affected whatsoever by my suit. My suit is
14 against state actors, not against the city. The city is not
15 a party. None of its departments are parties. None of its
16 assets or property is subject to any action by the Circuit
17 Court in my OMA suit. My OMA suit is exclusively against the
18 governor, the state treasurer, and the state Emergency
19 Financial Loan Board.

20 THE COURT: All right. Anything further, sir?

21 MR. PATERSON: No. I would just emphasize that the
22 de facto doctrine does validate all of the acts that have
23 occurred to date, in any event, and there's been no response
24 to that. I mean that is clearly the state law.

25 THE COURT: Thank you, sir.

1 MR. PATERSON: Thank you.

2 THE COURT: Who will be addressing this? Oh, I'm
3 sorry.

4 MS. BRYA: Good morning, your Honor. Michelle Brya
5 and Joshua Booth. We represent the governor, the state
6 treasurer, and the Local Emergency Financial Assistance Loan
7 Board in the state case.

8 It is our position that the scope of your order
9 extending the bankruptcy stay should include the Davis case.
10 In the debtor's motion they specifically requested that it
11 apply to actions against the governor, the treasurer, and the
12 Loan Board that directly or indirectly seek to enforce claims
13 against the city or interfere with the city's actions or
14 activities in the Chapter 9 case. Although the order that
15 was signed by this Court specifically acknowledged the three
16 pre-petition cases, we believe that by the language of that
17 order it said that that language was included for the
18 avoidance of doubt, and it didn't in any way limit the scope
19 of your order to those three cases.

20 The defendants in the state case, the Davis versus
21 Loan Board case, are the exact same defendants that this
22 Court acknowledged in its order, the state treasurer, the
23 governor, and the Local Financial Emergency Loan Board, and
24 Davis seeks to invalidate the emergency manager, and that
25 would clearly interfere with the state's activities in the

1 Chapter 9 bankruptcy case. Until Mr. Paterson filed his
2 reply brief, we weren't aware of his position with respect to
3 the invalidation, but clearly in his prayer for relief in the
4 state case in his second amended complaint he requests a
5 declaration that all decisions of the defendants, including
6 its votes taken at the March 14th Loan Board meeting, are
7 invalidated, and one of the decisions that they made that day
8 was the appointment of Mr. Orr, so we believe that by seeking
9 such relief, Mr. Paterson and Mr. Davis have not withdrawn
10 those claims for the invalidation of the emergency manager,
11 and, therefore, Judge Collette in the state case could still
12 order that invalidation occur and that Mr. Orr's appointment
13 be invalidated. And we believe that that could have a
14 significant impact on the Chapter 9 proceedings, and we're
15 asking that you extend the scope of stay.

16 THE COURT: Suppose the motion were granted with the
17 condition that prohibited that?

18 MS. BRYA: That prohibited the ability for the state
19 court to invalidate the emergency manager?

20 THE COURT: Precisely.

21 MS. BRYA: That would be something that we would be
22 probably comfortable with, your Honor. I mean certainly
23 that's the concern that we have is that if his position is
24 invalidated, then it could significantly impact the City of
25 Detroit and the state in general.

1 THE COURT: It sounds like all Mr. Davis and his
2 counsel want here is a declaration that the Open Meetings Act
3 was violated and attorney fees.

4 MS. BRYA: To some extent I think that that's
5 correct, your Honor, although they still have those claims in
6 their complaint, and so that relief, again, can still be
7 granted.

8 THE COURT: But if my order of clarification limited
9 Mr. Davis to those two forms of relief, you would be
10 comfortable with that?

11 MS. BRYA: Yes, your Honor, I believe we would.

12 THE COURT: All right. Thank you.

13 MS. BRYA: Thank you, your Honor.

14 MR. HEIMAN: Good morning, your Honor. David
15 Heiman, Jones Day, on behalf of the city. As a technical
16 matter, this seems more like a request for relief from stay
17 than clarification, but I'll leave that to your Honor, and I
18 don't -- it matters not to me whether we try to go through a
19 proper process or not in that respect, but I would like to
20 say that we're obviously very concerned about anything that
21 would in any way question the role or authority of the
22 executive decision-maker of the city, and I cannot imagine
23 anything that would be more disruptive to a Chapter 9 case
24 than that. So to just respond to your proposal, if I can
25 call it that, I also have no problem with the suggestion as

1 it relates to Mr. Davis and his counsel, Mr. Paterson. I am
2 concerned, however, about the impact of a ruling that
3 potentially invalidates the -- for the record, invalidates
4 the appointment of Mr. Orr not so much for the party that is
5 making the commitment to your Honor but for the rest of the
6 world and what they do with that, so I think we have to
7 address that. I have no problem with your Honor getting
8 comfortable with whatever works here, but I just want to make
9 sure that we have covered the waterfront in terms of not
10 being exposed to some third party coming in and saying, "Look
11 at that order," so with that --

12 THE COURT: Is it possible -- one second, sir. Is
13 it legally possible to give Mr. Orr and the city that kind of
14 protection?

15 MR. HEIMAN: I would assume -- I'm not a
16 constitutional scholar, your Honor, but I would assume if
17 your Honor issues an order that makes it clear -- and what I
18 think I heard you say is your order would say that, without,
19 again, being technical, the stay will not apply to the Davis
20 lawsuit -- the pending Davis lawsuit so long as the
21 Bankruptcy Court does not move to invalidate the appointment
22 of Mr. Orr.

23 THE COURT: Well, you said "Bankruptcy Court," but,
24 of course, you mean the Circuit Court.

25 MR. HEIMAN: Yes. I'm sorry. Excuse me. I'm

1 sorry. And so --

2 THE COURT: Well, actually my question was a little
3 more specific than that. It was the stay would be clarified
4 to permit Mr. Davis to seek a judgment -- a declaratory
5 judgment under the Open -- that the Open Meetings Act was
6 violated, obviously not finding that. That's not our role
7 here, but a declaratory judgment that the -- seeking a
8 declaratory judgment that the Open Meetings Act was violated
9 and attorney fees, period.

10 MR. HEIMAN: Okay. And if I may suggest that we add
11 to that and that no other party may use any such ruling
12 should it come to pass in any way regarding -- with respect
13 to Mr. Orr's appointment without coming back to the
14 Bankruptcy Court, I think we would be satisfied, so it's --
15 it would, in fact, be a clarification of the stay as relates
16 to Mr. Davis' lawsuit, so I would think we could do that,
17 your Honor.

18 THE COURT: Sir.

19 MR. PATERSON: Yes. I think the Court should be
20 aware that the Open Meetings Act itself I think addresses Mr.
21 Heiman's concern. Section MCL 15.273 reads, "The circuit
22 court shall not have jurisdiction to invalidate a decision of
23 a public body for a violation of this act unless an action is
24 commenced pursuant to this section within the following
25 specified period of time," and then "(a) Within 60 days after

1 the approved minutes are made available to the public by the
2 public body." His appointment was on March 14th. Sixty days
3 have come and gone. No one else can seek to invalidate the
4 appointment of Mr. Orr under Public Act 72 because the
5 Circuit Court would not have jurisdiction.

6 THE COURT: So I take it by that that you wouldn't
7 object to the additional suggestion that Mr. Heiman made
8 here.

9 MR. PATERSON: I would not. It simply restates the
10 law, I think, of the state.

11 THE COURT: Sir.

12 MR. HEIMAN: No. I was good.

13 THE COURT: Okay.

14 MR. HEIMAN: Thank you.

15 THE COURT: Well, in the circumstances, it appears
16 to the Court that we have an agreement as to how this motion
17 should be resolved, so, Mr. Peterson, I'm going to ask you to
18 prepare an order with the three agreed upon conditions here
19 and have it approved as to form by the Attorney General's
20 Office and counsel for the city and then submit it to the
21 Court.

22 MR. PATERSON: Will do. Thank you, your Honor.

23 THE COURT: You're all set, sir.

24 (Excerpt concluded at 10:20 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

August 29, 2013

Lois Garrett